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FILED
DISTRICT COURT OF GUAM
MAY 08 2017
JEANNE G. QUINATA
CLERK OF COURT

ORIGINAL

IN THE UNITED STATES DISTRICT COURT

FOR THE TERRITORY OF GUAM

| | |
|---|---|
| UNITED STATES OF AMERICA,<br>Plaintiff,<br>vs.<br>DANICA ANN C. DAMIAN,<br>Defendant. | CRIMINAL CASE NO. 17-00027<br><br>**PLEA AGREEMENT** |

The United States and the Defendant, DANICA ANN C. DAMIAN, enter into the following plea agreement:

**Charge and Penalties**

1. The Defendant, DANICA ANN C. DAMIAN, agrees to waive Indictment pursuant to Federal Criminal Procedure Rule 7(b), and to enter a guilty plea to the Information charging her with Theft of Government Property, in violation of 18 U.S.C. § 641.

2. Defendant understands and acknowledges the following:

(a) a conviction for Theft of Government Property in an amount greater than $1,000.00, in violation of 18 U.S.C. § 641 carries a maximum penalty of ten (10) years imprisonment, a $250,000.00 fine, a three-year period of supervised release, and a $100 special assessment fee. In addition to these maximum penalties, any violation of a supervised release order could lead to an additional term of up to two (2) years imprisonment, pursuant to 18 U.S.C. § 3583(e)(3). Defendant agrees to pay the special assessment at or before sentencing.

(b) Pursuant to the Mandatory Victim Restitution Act, the Court must order that the Defendant pay restitution to any victim of the offense of conviction, pursuant to 18 U.S.C. § 3663A. The Defendant agrees to make full restitution in the amount of $9,380.00 to the victim in this case, the U.S. Army National Guard Bureau.

**Voluntariness & Waiver of Trial Rights**

3. Defendant affirms that she has read this plea agreement and fully understands it. Defendant acknowledges that she enters this plea agreement and her decision to plead guilty voluntarily, and not because of any force, threats, promises or inducements, apart from the promises and inducements set forth in this plea agreement. She agrees to plead guilty because she is in fact guilty of the charged offense.

4. Defendant acknowledges that she understands that by entering a plea of guilty, she is waiving - that is, giving up - the following rights guaranteed to her by law and by the Constitution of the United States:

(a) the right to plead not guilty and to persist in a plea of not guilty;

(b) the right to a jury trial;

(c) the right to be represented by an attorney and, if necessary, to have the Court appoint counsel at trial and all stages of the proceedings;

(d) the right at trial to confront and cross-examine witnesses against her;

(e) the right to remain silent at trial, with such silence not being used against her in any way;

(f) the right, should she choose, to testify on her own behalf and to present evidence;

(g) the right to compel witnesses to appear at such a trial and to have them testify on her behalf;

(f) the right not to be prosecuted except by an indictment returned by a grand jury.

Defendant understands that any statement she gives under oath in connection with this guilty plea may be used against her by the United States in a prosecution for perjury or false statement.

**Elements of the Offense & Factual Basis**

5. Defendant understands and agrees that to establish the offense of Theft of Government Property, a violation of 18 U.S.C. § 641, the United States Government must prove each of the following elements beyond a reasonable doubt:

First, that the defendant knowingly stole or converted money to her own use with the intention of depriving the owner of the use or benefit of the money;

Second, that the money belonged to the United States; and

Third, that the value of the money was greater than $1,000.00.

6. Stipulated Factual Basis: The Government and the Defendant stipulate and agree to the following facts:

a. The Defendant was born in 1978, and is a citizen of the United States.

b. In September 2005, the United States Army National Guard Bureau, located in Arlington, Virginia, entered into a contract with Document & Packaging Brokers, Inc. ("Docupak"), located in Alabaster, Alabama, to administer a program called the Guard Recruiting Assistance Program ("G-RAP"). The G-RAP was designed to offer monetary incentives in the form of recruiting referral bonuses to Army National Guard Reserve soldiers, known as Recruiter Assistants (RA), to recruit other individuals to serve in the U.S. Army National Guard. After enrolling online and completing an online training course regarding the regulations governing G-RAP, the RA would establish an online account to record that RA's recruiting efforts. If a potential soldier, known as a "nominee," signed an enlistment contract, the RA who recruited that nominee would receive a $1,000 payment through direct deposit into a back account designated by the RA. The RA would receive an additional $1,000 direct deposit payment if the nominee attended basic training. If a nominee had previously served in the Armed Forces, that nominee was not required to attend basic training. In that instance, the RA would receive a $2,000 referral bonus upon that nominee's enlistment. Payments were wired from Docupak's Alabama bank account to the RA's designated bank account by means of wire communications in interstate commerce. Active Army National Guard recruiters were not eligible to participate in the G-RAP because they already received their government salary as compensation for their recruiting efforts.

c. Docupak submitted invoices each month to the Contracting Officer Representative of the U.S. Army National Guard Bureau assigned to the Docupak contract for review and verification of services delivered. The U.S. Army National Guard Bureau would then reimburse Docupak for the total amount of bonus payments Docupak paid the Recruiter Assistants, plus a significant administrative fee.

d. The G-RAP specifically prohibited an RA from nominating a nominee who the RA did not personally recruit. The RA was required to obtain a nominee's personal information directly from that nominee in order to receive the bonus money for that nominee. Prior to becoming eligible to participate in the G-RAP program, all prospective RA's were required to successfully complete the online training phase of the program. The prospective RA would have to electronically acknowledge all of the contents of the online training prior to final approval, including specifically acknowledging that falsely claiming to recruit a potential soldier would result in a criminal investigation into the crime of "theft of government funds." Only after the training was completed could the prospective RA create a login user name and password to login to the G-RAP web portal.

e. For the entire period from May 20, 2008, through on or November 1, 2010, in the District of Guam, the Defendant, DANICA ANN C. DAMIAN, was an Officer (O-2) in the Guam Army National Guard (GUARNG) stationed at the Joint Forces Headquarters, GUARNG, Barrigada, Guam. On or about May 20, 2008, the Defendant became a Recruiting Assistant (RA). Between May 2008 and November 2010, the Defendant, DANICA ANN C. DAMIAN, entered the personal identifiers of four potential soldiers. The Defendant entered these personal identifiers into her online G-RAP account and falsely claimed that she was responsible for referring the four potential soldiers to join the U.S. Army National Guard. These fraudulent actions caused the G-RAP Contractor, Docupak, to send the fraudulent recruiting bonuses to the personal bank account of the Defendant, DANICA ANN C. DAMIAN, by way of interstate wire transfer. As a result of these unlawful activities, the Defendant, DANICA ANN C. DAMIAN, obtained a total of $8,000.00 in fraudulent recruiting referral bonus payments from Docupak.

f. As payment for administering the G-RAP, the U.S. Army National Guard Bureau paid Docupak an additional $345 for administering each $2,000 referral bonus payment and $172.50 for each $1,000 referral bonus payment associated with each non-prior service soldier who was successfully referred through the G-RAP. Consequently, the fraudulent actions of the Defendant, DANICA ANN C. DAMIAN, resulted in a loss to the U.S. Army National Guard Bureau of $8,000.00 in bogus bonus payments and an additional $1,380.00 in administrative fees. Both parties stipulate that the appropriate amount of restitution that the Defendant must pay to the victim in this case, the U.S. Army National Guard Bureau, is $9,380.00.

g. The parties agree that the applicable loss amount for sentencing calculation purposes is more than $6,500 but not more than $15,000 under U.S.S.G. § 2B1.1(b)(1)(B).

h. The parties agree that the offense involved the unauthorized public dissemination of personal information under U.S.S.G. § 2B1.1(b)(17), by the unauthorized use of the identities of the Army National Guard nominees as follows:

| NOMINEE | DATE | AMOUNT |
|---|---|---|
| L.R.C. | 04/13/10 | $1,000.00 |
| L.R.C. | 08/19/10 | $1,000.00 |
| M.C.A. | 02/02/10 | $1,000.00 |
| M.C.A. | 10/06/10 | $1,000.00 |
| S.M.G. | 02/09/10 | $1,000.00 |
| S.M.G. | 05/10/10 | $1,000.00 |
| B.M.C. | 04/13/10 | $1,000.00 |
| B.M.C. | 06/23/10 | $1,000.00 |

**Sentencing Guidelines & Procedures**

7. Defendant understands and acknowledges that:

(a) The Sentencing Guidelines apply in this case. In determining a sentence, the Court is obligated to calculate the applicable sentencing guideline range and to consider that range, possible departures or variances under the Sentencing Guidelines, and other sentencing factors under 18 U.S.C. § 3553(a);

(b) The United States will make its full discovery file available to the Probation Office for its use in preparing the presentence report;

(c) The Court will rely on the facts established in this case - including, but not limited to, the facts Defendant stipulates to in this plea agreement - in determining the applicable offense level and resulting guideline range;

(d) Sentencing discussions between Defendant and defense counsel or between defense counsel and the U.S. Attorney's Office are not part of this plea agreement, and Defendant is not relying on the possibility of any particular guideline range or sentence based on any such discussions;

(e) No promises or guarantees have been made to Defendant regarding either the guideline range or the sentence that will be imposed. The Court is not required to follow the Sentencing Guidelines or to accept any sentencing recommendations made by the United States or by the Defendant, and the Court may impose any sentence up to and including the maximum penalties set out above. Pursuant to Rule 11(c)(1)(B) of the Federal Rules of Criminal Procedure, if the Court does not accept a sentencing recommendation made by the United States, Defendant nevertheless has no right to withdraw her guilty plea.

## Agreements of the United States

8. The United States agrees to recommend that the Court, in determining Defendant's sentencing guideline range, apply the maximum available reduction for acceptance of responsibility. This recommendation, however, is based on facts currently known to the United States and is contingent on Defendant accepting responsibility according to the factors set forth in § 3E1.1 of the Sentencing Guidelines. The United States is free to withdraw this recommendation if Defendant has previously engaged in any conduct which is unknown to the United States and is inconsistent with acceptance of responsibility, or if she engages in any conduct between the date of this plea agreement and the sentencing hearing which is inconsistent with acceptance of responsibility.

9. The United States agrees to recommend at sentencing that the Court impose the minimum sentence of the applicable guideline range, full restitution and 50 hours of community service.

## Financial Disclosure Obligations

10. Defendant agrees to submit to the U.S. Attorney's Office, within three weeks of the execution of this plea agreement, a complete, accurate and truthful financial statement and accompanying releases, in a form it provides and as it directs. Defendant agrees to disclose all assets in which she has any interest or over which she exercises control, directly or indirectly, including those held by a spouse, nominee or other third party. Defendant authorizes the U.S. Attorney's Office to obtain a credit report on her to evaluate her ability to satisfy any financial obligation imposed by the Court.

11. The Defendant understands and agrees that whatever monetary penalties are imposed by the Court will be due and payable immediately and subject to immediate enforcement by the

United States, pursuant to 18 U.S.C. § 3613. Defendant understands that, by law, interest accrues on any remaining balance of the debt. The Defendant agrees not to dissipate assets. If Defendant is financially unable to immediately pay any monetary penalties in full, Defendant agrees: (a) to cooperate with the United States Attorney's Office; (b) to provide updated financial statements upon request by the United States Attorney's Office and to keep the office advised about Defendant's current address; and (c) for her debt to be placed on the Treasury Offset Program and any tax refund/rebate offset program existing in her state of residency. Defendant understands that any funds captured by an offset program will be paid towards her monetary penalties, but does not relieve her of her obligation to pay the monetary penalties in full.

**Consequences of Breach**

12. Defendant agrees that if she is deemed by the Court to be in material breach of any of her obligations under this agreement: (a) Defendant shall not be entitled to withdraw her plea of guilty made in connection with this agreement; (b) the United States may, in its discretion and at its option, declare null and void any of its obligations under this agreement; and (c) the United States may recommend whatever sentence it may deem appropriate. The issue of whether Defendant is in material breach of this agreement shall be determined by the Court in a proceeding at which the United States shall be required to establish breach by a preponderance of the evidence. Defendant understands and agrees that the Federal Rules of Evidence shall not apply at any such hearing, and that the United States may rely at the hearing on any statements or evidence Defendant may have given during cooperation with law enforcement.

**Waiver of Post-Sentencing Rights**

13. Defendant voluntarily, knowingly and intelligently waives any right to appeal or to collaterally attack any aspect of her conviction including, but not limited to, any pretrial

dispositions of motions and other issues. Defendant acknowledges and agrees that this waiver shall result in the dismissal of any appeal or collateral attack Defendant might file challenging her conviction in this case, other than an attack based on alleged ineffective assistance of counsel, alleged involuntariness of the Defendant's guilty plea, or alleged prosecutorial misconduct. Defendant reserves the right to appeal her sentence.

**Consequences of Withdrawal of Guilty Plea or Vacating of Conviction**

14. Defendant agrees that if she is allowed to withdraw her guilty plea or if any conviction entered pursuant to this agreement is vacated or rendered invalid for any reason, the Court shall, at the request of the United States, reinstate any charges that were dismissed as part of this agreement. Defendant also agrees that within six months after the date the order vacating or invalidating Defendant's conviction or allowing her to withdraw her guilty plea becomes final, the United States may file additional charges against Defendant relating directly or indirectly to the conduct underlying the guilty plea. Defendant waives her right to challenge any such additional charges on the ground that they were not filed in a timely manner, including any claim that they were filed after the limitations period expired.

**Completeness and Effect**

15. Nothing in this plea agreement shall bind any federal, state or local districts, jurisdiction or law enforcement agency, other than the United States Attorney for the Districts of Guam and the Northern Mariana Islands.

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16. Defendant acknowledges that this is the only plea agreement in this case. This plea agreement cannot be modified other than by a writing signed by all parties, or by a modification acknowledged by all parties on the record in Court.

5/5/17
Date

DANICA ANN C. DAMIAN
Defendant

5/2/17
Date

PETER C. PEREZ
Attorney for Defendant

SHAWN N. ANDERSON
Acting United States Attorney
Districts of Guam and the NMI

5/8/17
Date

By:

MARIVIC P. DAVID
Assistant U.S. Attorney